NO. 96-31380

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| NATURAL RESERVES GROUP, INC.,<br>Plaintiff,<br>vs.<br>BAKER HUGHES INC., et al.,<br>Defendants. | § | IN THE DISTRICT COURT OF<br>HARRIS COUNTY, TEXAS<br>333RD JUDICIAL DISTRICT |

**DEFENDANTS' AMENDED MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS IN PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION**

Defendant Baker Hughes Inc. and all of the other defendants (collectively "defendants") move for summary judgment on all of the causes of action pled by plaintiff Natural Reserves Group, Inc. ("NRG") in Plaintiff's First Amended Original Petition, as follows:

**SUMMARY OF ARGUMENT**

Apparently acknowledging the deficiency of its original claims in the face of defendants' motions for summary judgment, NRG, in responding to those motions, amended its Original Petition. NRG's amendment is unavailing. NRG's amended claims remain deficient for the reasons set forth in defendants' initial motions.[1] (All three of those motions are incorporated by reference as if fully copied verbatim in this motion.) In addition, as set forth below, NRG's new allegations in its claims are also deficient. NRG alleges that defendants had an affirmative duty to

[1] Those three motions are: (1) Defendants' Motion for Summary Judgment on All Claims Based on Defendants' Independent Development of Information Contained in Baker Hughes' Patents (July 21, 1997); (2) Defendants' Motion for Partial Summary Judgment on NRG's Fourth and Fifth Causes of Action (July 21, 1997); and (3) Defendants' Motion for Partial Summary Judgment Based on the Statute of Limitations (July 21, 1997).

disclose to NRG the fact that they had already independently developed the technology claimed to constitute NRG's proprietary information.[2] No such duty is imposed by the confidentiality agreements between the parties, by fraud law, or by the relationship between the parties. Accordingly, defendants are entitled to judgment as a matter of law on every claim in Plaintiff's First Amended Original Petition.

## ARGUMENT

Summary judgment is proper on each claim in NRG's Amended Petition on two grounds. First, as set forth in defendants' initial motions, this Court should grant summary judgment in this case because the evidence of record negates an essential element of each of NRG's claims, and because NRG has failed to raise a genuine issue of material fact relating to that evidence. See Tex.R.Civ.P. 166a(c).

Second, this Court should grant summary judgment because of the absence of evidence to support that essential element. The current standards for summary judgment in Texas provide:

> After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of claims . . . on which an adverse party would have the burden of proof at trial. . . . The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

Tex.R.Civ.P. 166a(i).[3] (Thus, the standard to be applied is the same as in federal courts.) While defendants have gone beyond such a "no evidence" summary judgment motion and marshalled the record evidence disproving at least one essential element of each of NRG's claims, summary

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[2] The pertinent allegations in the Amended Petition state that defendants "fail[ed] to timely disclose to NRG . . . that they had independently developed similar technology," that defendants "owed NRG a duty to fully disclose whether they had independently developed similar technology," and that defendants "represented that neither they, nor anyone else to their knowledge, were developing technology similar to NRG's Proprietary Information." Plaintiff's First Amended Original Petition ¶¶ 35, 44, 53.

[3] This subpart took effect on September 1, 1997 and applies to all motions for summary judgment filed on or after that date. Accordingly, it applies to this motion.

judgment is also warranted because of the absence of evidence supporting an essential element in NRG's claims.

## I. SUMMARY JUDGMENT IS WARRANTED ON NRG'S AMENDED BREACH OF CONTRACT CLAIM.

Summary judgment on NRG's breach of contract claim is proper because defendants had no contractual duty to disclose their preexisting independent development to NRG. The agreements in question impose an obligation only on the party receiving "proprietary information" to not use or disclose that information without the permission of the disclosing party. They do not impose an affirmative duty on either party to disclose or discuss any of its technology. See Defendants' Motion for Summary Judgment on all Claims Based on Defendants' Independent Development of Information Contained in Baker Hughes Patents, Exhibits 13 through 16 at 1-2, ¶¶ 2-5 (July 21, 1997) ("Defendants' Initial Motion").

NRG's assertions to the contrary are meritless. See Plaintiff's Response to Defendants Motions for Summary Judgment at 44-45 (Sept. 5, 1997) ("NRG Response"). NRG erroneously relies on the preamble paragraph of the agreements and ignores the substantive provisions in those agreements. While the prefatory clause relied on by NRG notes the parties' contemplation that each party may disclose certain of its confidential and proprietary information to the other, it does not affirmatively obligate either party to disclose such information. See Exhibits 13 through 16 at 1 to Defendants' Initial Motion. The respective obligations of the parties are contained in the numbered substantive paragraphs following the language "the parties agree as follows," not in the prefatory clause relied on by NRG. Id. at 2.

Indeed, the contract language specifically contemplates the situation at issue in this case, where a party discloses claimed proprietary and confidential information to a receiving party who already possesses such information. See id. at 2, ¶ 7(c). In such circumstances, the contract does not obligate the receiving party to immediately disclose that it already possesses the alleged

proprietary information. Rather, the contract specifically acknowledges the receiving party's right to "use or disclose" that information as it sees fit. Id. at 2, ¶¶ 7 & 7(c) ("[n]othing hereinabove contained shall deprive the Receiving Party of the right to use or disclose any information . . . which is possessed by the Receiving Party, as evidenced by the Receiving Party's written records, before the receipt thereof from the Disclosing Party").[4] There is no obligation that the receiving party notify the disclosing party that it already possessed such information or to otherwise characterize the extent of its preexisting knowledge. NRG's arguments to the contrary are based on a false premise, and summary judgment is warranted for defendants.

Moreover, NRG's argument also leads to ludicrous and unprincipled results. The prefatory clause on which NRG relies refers only generally to "the confidential and proprietary information of the other party." Thus, if that phrase is interpreted to require an affirmative duty of disclosure, it would require defendants and NRG to disclose every piece of such information on any topic anywhere in their companies, regardless of whether it was related to the technology at issue. Such an interpretation is unprincipled, and therefore cannot be imposed as a matter of law.

## II. SUMMARY JUDGMENT SHOULD BE ENTERED ON NRG'S AMENDED FRAUD CLAIM.

Summary judgment must be entered on NRG's fraud claim because no liability for fraud can arise under the circumstances alleged by NRG as a matter of law. Confronted with unassailable evidence of defendants' independent development of the technology at issue in this case, NRG erroneously claims that its fraud claim still survives because defendants allegedly fraudulently "misrepresented that [they] had not independently developed the same Technology that NRG disclosed to" them. NRG Response at 45.

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[4] The agreements contain precisely the same provisions for the situation in which the "Receiving Party" independently develops the alleged proprietary information after the disclosure. Exhibits 13 through 16 at 2-3, ¶¶ 7 & 7(e).

NRG's amended claim is nonetheless deficient. An essential element of any fraud claim is that the plaintiff rely on the misrepresentation "to its detriment." Kansa Reinsurance Co. v. Congressional Mortgage Corp., 20 F.3d 1362, 1375 (5th Cir. 1994) (applying Texas law). This element is missing in this case as a matter of law.

NRG was not detrimentally affected by the alleged misrepresentation for two reasons. First, defendants took nothing from NRG as a result of the alleged misrepresentation, and NRG suffered no detriment. Defendants had already independently developed the information, and thus there was no information for defendants to take from NRG when defendants filed for their patents. Indeed, NRG complains that it suffered only because defendants were able to file for their patent before NRG. NRG Response at 42-43. However, NRG does not, because it cannot, show that its delayed filing is a "detriment." NRG admittedly filed for and received a patent on its technology. The same result would have been obtained if NRG had filed its patent application first: NRG would have received a patent. NRG therefore received precisely what it would have without any alleged misrepresentation by defendants and suffered no legal detriment.

Second, and more importantly, NRG suffered no detriment from any misrepresentation of defendants because the uncontroverted evidence shows that any delay in NRG's filing for its patent was caused by NRG rather than reliance on defendants. NRG's lack of reliance is evident from its own statement of facts and from the testimony of its own witnesses. As noted in NRG's statement of facts, defendants filed for their patent on August 7, 1992, while NRG filed on September 10, 1992. NRG Response at 28. However, the inventor on NRG's patent, Mr. Graham, admitted:

> Shortly after the April 27, 1992 meeting [with defendants], NRG decided that it did not want to wait any longer for [defendants] to make up [their] mind about a joint patent. On May 4, 1992, Bert Scales and I met with a patent lawyer to start the process of patenting NRG's technology. During the next several months, I worked with the patent lawyer in preparing several patent applications[, including the patent at issue].

Exhibit A at 11, ¶ 30, to NRG's Response. Thus, as of the end of April of 1992, over three months before defendants filed for their patent, NRG "gave up" on any prospect that it would jointly patent the invention with defendants, and began the patent application process on its own.

Consequently, any supposed detriment that NRG suffered from filing its patent application after defendants filed their application was not caused by reliance on defendants' alleged misrepresentation, but by NRG's own delay or that of its patent lawyer. Because a necessary element of its amended fraud claim is missing, NRG's claim should be dismissed and summary judgment entered for defendants.

## III. SUMMARY JUDGMENT SHOULD BE ENTERED ON NRG'S AMENDED CLAIMS FOR BREACH OF FIDUCIARY DUTY AND BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING.

Entry of summary judgment on NRG's claims for breach of fiduciary duty and breach of the duty of good faith and fair dealing is likewise appropriate. Although there is no fiduciary duty in this case in any event for the reasons stated in defendants' initial motions for summary judgment on that claim, any even arguable fiduciary duty that could apply did not impose a duty on defendants to affirmatively disclose or make representations concerning their independent development of the technology.

Even assuming for the sake of argument that a "confidential or fiduciary relationship" existed between NRG and defendants, the "duties" arising from that relationship are not as extensive as NRG suggests. NRG erroneously argues that the duty imposed on defendants by virtue of their agreement and relationship with NRG included a duty to "fully disclose all material information." NRG Response at 46. To the contrary, even the cases NRG cites in support of its argument that a confidential relationship existed preclude such an argument.

For example, in Hyde Corp. v. Huffines, 314 S.W.2d 763 (Tex. 1958), the case NRG calls the "seminal Texas case on the duty created in connection with the disclosure of trade secrets" (NRG Response at 50), the court discusses only "a duty not to disclose the secret or to use it

adversely." Hyde, 314 S.W.2d at 770. It finds no affirmative duties of disclosure. Id. Likewise, Brown v. Fowler, 316 S.W.2d 111 (Tex. Civ. App.—Ft. Worth 1958, writ ref'd n.r.e.), the second case relied upon by NRG, refers only to a duty of the defendants not "to apply the secret to their own use." Id. at 114. Finally, the last case on which NRG relies, Avera v. Clark Moulding, 791 S.W.2d 144 (Tex. App.—Dallas 1990, no writ), the case NRG terms "virtually identical to NRG's case" (NRG Response at 52), refers only to a duty not to use the trade secret without permission. Avera, 791 S.W.2d at 146. None of the cases finds or implies any affirmative duty of disclosure on the part of the receiving party.

NRG cites no case concerning disclosure of trade secrets to support the existence of its claimed duty. Tellingly, the cases cited by NRG in support of the supposed "duty to disclose all material information" (NRG Response at 46) are cases in which a very different type of relationship existed and therefore imposed an affirmative duty of disclosure. See Murphy v. Seabridge, Ltd., 868 S.W.2d 929, 935 (Tex. App.—Houston[14th Dist.] 1994, writ denied) (partner's fiduciary duty to partnership); NRC, Inc. v. Huddleston, 886 S.W.2d 526, 530 (Tex. App.—Austin 1994, no writ) (escrow agent's fiduciary duty to builder). Thus, those cases are inapplicable because the relationships involved are obviously not even vaguely the same as the relationship in this case. All fiduciary or confidential relationships are not equal, and the concomitant duties they impose are not coextensive.

Indeed, Murphy and NRC do not stand for the proposition that there is an affirmative duty to disclose material information in all fiduciary relationships. Indeed, those cases do not even discuss whether a fiduciary duty can arise from the disclosure of a trade secret (as in this case), let alone do they purport to describe the scope of the duties that apply in such a circumstance. See Murphy, 868 S.W.2d at 935; NRC, 886 S.W.2d at 530.

Summary judgment on NRG's claim for breach of the duty of good faith and fair dealing is entirely dependent on its fiduciary duty claim. NRG asserts and alleges that such a claim survives only because defendants owed a fiduciary duty to NRG. See NRG Response at 46 (citing in support of its claim only case law that "a fiduciary duty encompasses at the very minimum a duty of good faith and fair dealing"); Plaintiff's First Original Amended Petition at 13, ¶ 49 ("defendants owed to NRG a duty of good faith and fair dealing" only "[b]y virtue of the special relationship of trust and confidence between NRG and . . . defendants" alleged in the claim for breach of fiduciary duty). Because, as demonstrated above and in defendants' initial motions, NRG's fiduciary duty claim is fatally defective, NRG's claim for breach of the duty of good faith and fair dealing must fail as well.

## CONCLUSION

The amendments made by NRG to its Original Petition, while indicative of NRG's desperate state, do not change the propriety of summary judgment. Accordingly, this Court should grant defendants' amended motion for summary judgment as to all of NRG's claims as amended, and dismiss NRG's Amended Original Petition with prejudice.

WHEREFORE, PREMISES CONSIDERED, Baker Hughes Inc. and all of the other defendants request that the Court grant summary judgment dismissing all of the causes of action in the First Amended Original Petition of plaintiff Natural Reserves Group, Inc., and defendants request such other further relief to which they may be justly entitled.

DATED this 8th day of September, 1997.

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## CERTIFICATE OF SERVICE

I certify that on this 12th day of September, 1997, I caused to be sent by facsimile and certified mail, return receipt requested, a correct copy of the above **DEFENDANTS' AMENDED MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS IN PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION** to opposing counsel of record in this lawsuit.

GLENN A. BALLARD, JR.